

**UNITED STATES DISTRICT COURT**  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

VHT, INC.,

Plaintiff,

v.

ZILLOW GROUP, INC., et al.,

Defendants.

JUDGMENT IN A CIVIL CASE

CASE NO. C15-1096JLR

- **Jury Verdict.** This action came before the court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- X** **Decision by Court.** This action came to consideration before the court. The issues have been considered and a decision has been rendered.

The disputes between and among the parties in the above-captioned case have been resolved through a series of opinions and orders from this court, a jury verdict, stipulations between the parties, and a decision of the Ninth Circuit, as follows:

A. On December 23, 2016, the court entered an Order (Dkt. # 211) granting in part and denying in part the parties’ cross-motions for summary judgment, including granting summary judgment to defendants Zillow, Inc., and Zillow Group, Inc. (together, “Zillow”) on VHT’s claims relating to use of 54,257 VHT Photos on Zillow’s Listing Site; and granting summary judgment to VHT, Inc. (“VHT”) on Zillow’s counterclaims.

B. On January 19, 2017, the court entered an Order (Dkt. # 236) addressing VHT’s motion for reconsideration and renewed motion for summary judgment, as well as

several issues relating to the parties' cross-motions for summary judgment and motions in limine.

C. From January 23 through February 9, 2017, a jury trial was held, at the conclusion of which, the jury submitted a completed verdict form (Dkt. # 281) awarding VHT, on its copyright infringement claims for all 28,125 VHT Photos at issue at trial, alternative awards of \$8,247,300 in statutory damages and \$79,875 in actual damages. The jury found that Zillow had willfully infringed VHT's copyrights in 3,373 images.

D. On February 10, 2017, VHT elected statutory damages on its claims for all VHT Photos eligible for statutory damages, and actual damages on all remaining VHT Photos (Dkt. # 274).

E. On February 22, 2017, the Clerk of the court entered judgment in favor of VHT and against Zillow in the amount of \$8,272,328.92 (Dkt. # 296).

F. On March 22, 2017, Zillow timely moved for judgment as a matter of law under Federal Rule of Civil Procedure 50, and alternatively for a new trial under Federal Rule of Civil Procedures 59 (Dkt. # 301), and VHT moved to amend the Clerk's judgment and for entry of a permanent injunction under Federal Rules of Civil Procedure 59(e) and 65 (Dkt. # 300).

G. On June 20, 2017, the court entered an Order (Dkt. # 315) on the post-trial motions in which the court:

1. granted Zillow's motions for judgment as a matter of law with respect to VHT's direct copyright infringement claims for 24,202 of the VHT Photos and VHT's indirect copyright infringement claims for 27,994 of the VHT Photos;
2. denied Zillow's motions for judgment as a matter of law and for a new trial with respect to VHT's direct copyright infringement claims for 3,921 "displayed, searchable" VHT Photos and 2 VHT Photos copied via email and/or blog post, as well as the jury's damages award for each

of those VHT Photos; and

3. granted a new trial on VHT's indirect copyright infringement claims for 114 VHT Photos that VHT had specifically identified to Zillow prior to the first infringing act by Zillow and for which the court had not denied Zillow's motions for judgment as a matter of law and alternatively for a new trial.

Based on these rulings, the court held that of the 3,923 VHT Photos for which the direct infringement liability verdict remained intact, 2,702 were eligible for statutory damages and 1,221 were ineligible for statutory damages. Of the 2,702 VHT Photos eligible for statutory damages, the jury awarded \$1,500.00 apiece in statutory damages for 2,700 images, and \$200.00 apiece in statutory damages for two images. Accordingly, the court reduced the statutory damages award to \$4,050,400.00. Because the jury awarded \$2.84 in actual damages per infringement, and VHT opted to receive actual damages only for infringement of images that were ineligible for statutory damages, the court reduced the actual damages award to \$3,467.64. Based on these calculations, the court reduced the total damages award to \$4,053,867.64.

H. On June 27, 2017, the parties filed a joint submission (Dkt. # 316) in which they stipulated and agreed to waive their rights to file motions for costs and for attorneys' fees, and to the dismissal without prejudice of VHT's indirect copyright infringement claims with respect to the 114 VHT Photos on which the court granted a new trial in its Order of June 20, 2017 (Dkt. # 315);

I. On July 10, 2017, the court entered a Final Judgment, embodying the rulings described above, from which Zillow and VHT cross-appealed;

J. On March 15, 2019, the Ninth Circuit decided Zillow's and VHT's cross-appeals as follows:

1. affirmed this court's summary judgment in favor of Zillow on direct infringement of photos used on Zillow's Listing Platform;

2. affirmed this court's grant of judgment notwithstanding the verdict in favor of Zillow for direct liability as to 22,109 non-displayed photos and 2,093 displayed but not searchable photos on the Digs site;
3. affirmed this court's judgment in favor of VHT on 3,921 displayed, searchable photos on the Digs site;
4. affirmed this court's judgment notwithstanding the verdict in favor of Zillow on secondary liability, both contributory and vicarious, on the Digs photos;
5. reversed this court's denial of Zillow's motion for judgment notwithstanding the verdict on willfulness and vacated the jury's finding on willfulness; and
6. remanded the case to this Court for reconsideration of the compilation issue.

K. On October 7, 2019, the United States Supreme Court denied VHT's Petition for a Writ of Certiorari.

L. On May 8, 2020, the court entered an order (Dkt. # 347) on Zillow's motions for judgment on the pleadings and for partial summary judgment, as well as VHT's motion for partial summary judgment on compilation issues. Construing Zillow's motion for judgment on the pleadings as part of its motion for partial summary judgment, the court denied Zillow's motion for partial summary judgment, and granted VHT's motion for partial summary judgment.

M. On May 29, 2020, the parties submitted (a) a joint statement specifying each party's view as to the remaining issues left for adjudication, and (b) a joint proposed amended judgment with certain competing provisions. On March 10, 2021, the court set the matter for a new trial, "limited to the 2,700 images that remain at issue in this case on the questions of (1) whether Zillow's infringement of the images was innocent and (2) statutory damages." (Dkt. # 351 at 2.)

N. VHT and Zillow later agreed, and the Court ordered, that the new trial be held without a jury based on briefing, oral argument, and testimony and evidence admitted at the previous jury trial. (Dkt. # 359.)

O. The parties have now fully briefed the issues set for trial. (*See* Dkt. ## 361-365, 368-371.) The court heard closing arguments on December 14, 2021. (Dkt. # 377.)

P. The court has now entered Findings of Fact and Conclusions of Law on the matters set for trial in Dkt. # 351 at 2. (Dkt. # 387.)

Based on these opinions and orders, the jury verdict and stipulations between the parties, the Ninth Circuit's decision, the additional briefing and argument submitted by the parties after remand, the Findings of Fact and Conclusions of Law entered by the court, and all other orders issued in this case, it is hereby **ORDERED** that, for the reasons set forth in the above-referenced opinions and orders, jury verdict, and stipulations, that an

**AMENDED FINAL JUDGMENT IS ENTERED** as follows:

**Direct Infringement**

1. Judgment is entered in favor of plaintiff VHT, Inc. and against defendants Zillow Inc. and Zillow Group, Inc., on VHT's direct copyright infringement claims for the 3,923 VHT Photos identified in the court's Order of June 20, 2017 (Dkt. # 315), in the amount of \$1,931,067.64, along with (a) pre-judgment interest for the 1,221 VHT Photos not eligible for statutory damages, running with respect to each photo from the date that photo was first made available on Zillow's Digs site (as reflected in Column P of Trial Exhibit 512), through July 10, 2017, as well as (b) post-judgment interest on the full award (including prejudgment interest) as to all 3,923 VHT Photos, running from July 10, 2017, through the date of payment, both at the statutory rate pursuant to 28 U.S.C. § 1961;

2. Judgment as a matter of law is entered in favor of defendants Zillow Inc. and Zillow Group, Inc. and against plaintiff VHT, Inc., on VHT's claims of willful infringement;

3. Judgment as a matter of law is entered in favor of defendants Zillow Inc. and Zillow Group, Inc. and against plaintiff VHT, Inc., on VHT's direct copyright infringement claims for the remaining 24,202 VHT Photos identified in the court's Order of June 20, 2017 (Dkt. # 315);

4. Judgment as a matter of law is entered in favor of defendants Zillow Inc. and Zillow Group, Inc. and against plaintiff VHT, Inc., on VHT's direct copyright infringement claims regarding the 54,257 VHT Photos identified in VHT's Third Amended Complaint (Dkt. # 123) as having been displayed on Zillow's Listing Site on Home Details Pages of properties not actively listed for sale;

**Indirect Infringement**

5. Judgment as a matter of law is entered in favor of defendants Zillow Inc. and Zillow Group, Inc. and against plaintiff VHT, Inc., on VHT's indirect copyright infringement claims for the remaining 27,994 VHT Photos identified in the court's Order of June 20, 2017 (Dkt. # 315);

**Other**

6. Judgment is entered dismissing without prejudice VHT's indirect copyright infringement claims for the 114 VHT Photos on which the court had granted a new trial in its Order of June 20, 2017 (Dkt. # 315) and the additional 17 VHT Photos discussed in that Order that VHT had specifically identified to Zillow prior to the first infringing act by Zillow, pursuant to the parties' agreement in their joint submission dated June 27, 2017 (Dkt. # 316);

7. Judgment is entered in favor of plaintiff VHT, Inc. and against defendants Zillow Inc. and Zillow Group, Inc., on Zillow's counterclaims set forth in Zillow's Answer to VHT's Third Amended Complaint (Dkt. # 156);

8. Pursuant to the parties' agreement in their joint submission dated June 27, 2017 (Dkt. # 316), no party shall be awarded attorneys' fees or costs;

This case is closed, and the deadline to file any notice of appeal is 30 days after the issuance of this Judgment.

Filed and entered this 26th day of January, 2022.

RAVI SUBRAMANIAN  
Clerk of Court

s/ Ashleigh Drecktrah  
Deputy Clerk